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QUESTION OF THE REALIZATION IN ALL COUNTRIES OF THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS CONTAINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND IN THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, AND STUDY OF SPECIAL PROBLEMS WHICH THE DEVELOPING COUNTRIES FACE IN THEIR EFFORTS TO ACHIEVE THESE HUMAN RIGHTS

QUESTION OF THE REALIZATION OF THE RIGHT TO DEVELOPMENT

Written statement submitted by the Centre Europe-Tiers Monde, a non-governmental organization on the Roster

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[25 March 1998]

GE.98-11474 (E)

1. Centre Europe-Tiers Monde (CETIM) has for long been monitoring developments of global importance which have seriously effected the realization of economic, social and cultural rights and the right to development. It is with grave concern that we have been alerted to the drafting and negotiation by member States of the rich countries' club, the OECD (Organization for Economic Cooperation and Development), of a treaty of international significance which will severely endanger the realization of all human rights contained in the Universal Declaration of Human Rights, the two International Covenants on Human Rights and the Declaration on the Right to Development.

2. Since 1995, the Multilateral Agreement on Investments (MAI) has been negotiated in the greatest of secrecy and away from public scrutiny. If adopted, the treaty will grant absolute rights to the most powerful global entities - transnational corporations - and impose draconian obligations on peoples and States. In effect, the objective of MAI is to organize the transfer of sovereignty from States to international investors in all sectors, economic, social, cultural and political, undermining forever the principle that all sovereignty resides essentially in the nation.

3. In addition to the fact that the MAI negotiators from the so-called "democracies" of the rich and powerful countries have violated the human right of free expression and opinion, including the right to information, by the manner in which they have conducted the negotiations, the contents, procedures and mechanisms foreseen in the Agreement contain draconian legal provisions which severely curb the sovereign rights of States and peoples to determine the type of society they wish to live in. Some of the most significant provisions in this connection include the following.

4. The treaty extends the definition of "investments" to include not only foreign direct investment (FDI) in its classical form, but also stocks, bonds and other monetary instruments. The treaty would force countries to treat foreign investors as favourably as they do national companies (the "most favoured nation" principle) without requiring performance standards relating to employment, choice of suppliers, transfer of technology. Subsidies for domestic businesses and limits on foreign ownership would be forbidden. An enterprise that is bought by a foreign entity can be closed down and the capital and profits repatriated at any moment. The treaty also seeks to transfer power away from national and local governments in favour of transnational corporations (TNCs) by imposing on States unconditional submission to international arbitration in case of litigation.

5. The defenders of MAI claim that "exceptions" or "reservations" can be made to protect culture, social rights, public health, environment, etc., but these, to be effective, must also be accepted by all the parties to the negotiations. Countries that join subsequently within the framework of the World Trade Organization (WTO) will not be given this possibility. More importantly, under the treaty, the State is also under the obligation not to introduce any new restrictive legislation in the domain covered by MAI ("standstill") and to dismantle existing restrictions ("rollback"), including in areas in which the State has lodged a "reserve", whether in the cultural, social, economic or political fields.

6. MAI also limits the possibility for exceptions to the treaty and permits the practice by monopolies of differential prices in different geographical markets "when such differences are based on normal commercial conditions, notably the consideration of supply and demand in these markets".

7. The generality of the clauses relating to the liberalization of investment means that the Agreement, if signed and ratified, will become the rule of reference and render subsidiary other bilateral and multilateral treaties, including those governing regional arrangements. It is of significance that the only exceptions foreseen by MAI are the obligations incumbent upon States as signatories of the International Monetary Fund and under the OECD guidelines which, in any case, contain only "recommendations" for TNCs.

8. MAI is not only ambitious in the fields covered but is also intended to become universally applicable. Although negotiated among the 29 rich member States of the OECD, it will be open for signature by all States members of the World Trade Organization and those, like China and the Russian Federation, aspiring to become members. MAI is envisaged as a complement to the global trade regime being elaborated with the WTO "until it can be integrated" and as a "step toward a veritable universal investment regime". Even in the case that the attempt to force MAI upon Governments are defeated, the dominant forces behind MAI are, even now, seeking to establish an identical regime by other means. All democratic forces must remain vigilant with regard to discussions within WTO on Trade-Related Investment Measures (TRIMs); the negotiations on the New Transatlantic Market (NTM), negotiated, in the greatest secrecy, between the United States and Sir Leon Brittan for the European Union; the traditional institutions favourable to deregulation such as the International Monetary Fund and the World Bank. The recent financial crisis in Asia allows these institutions to obtain investment concessions. Even UNCTAD, once the champion of the third world within the United Nations, now cooperates with the business lobby to draw third world countries within liberalized investment regimes.

9. It is now known that behind MAI (and similar treaties being negotiated) are large economic and financial entities acting globally and supported by powerful States, particularly the United States. All large organizations of TNCs have had either a direct or indirect influence on the negotiations around MAI, including the International Chamber of Commerce, the United States Council of International Business, the European Roundtable of Industrialists (45 heads of the largest European companies) and the Japanese employers (Keidanran).

10. For all these reasons, all democratic forces around the world must remain vigilant. The negotiators of such treaties have shown contempt for the many other legal, political and moral commitments which are in contradiction with these texts already undertaken by States. These include the international human rights instruments, ILO conventions, the declarations and programmes of action adopted by international conferences and, in particular, the provisions of the Charter of Economic Rights and Duties of States which provides that each nation has the inalienable right to regulate foreign investments and to exercise control over investments.

11. In adopting the Declaration on the Right to Development, States clearly recognized that "development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom". States have also recognized that "the human person is the central subject of development and should be the active participant and beneficiary of the right to development" (art. 2.1). By doing so, States have recognized the necessity of reversing the logic that places profit over human well-being.

12. The precondition for the realization of all human rights, including the right to development, is the right of peoples to self-determination, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development. All peoples also have the right, for their own ends, freely to dispose of their natural wealth and resources, and in no case may a people be deprived of its own means of subsistence.

13. In the light of the urgency for action, particularly in the context of the forthcoming WTO Ministerial Conference due to meet in Geneva in May this year, CETIM reminds the Commission on Human Rights of its duty to take action in order to reverse the perverted logic behind these treaties which constitutes the most important obstacle to the realization of all human rights. CETIM deeply regrets that the Commission, at its 1997 session, failed to even consider the recommendation of the Sub-Commission to establish an open-ended working group on the activities and methods of transnational corporations to, inter alia, make recommendations and proposals aimed at regulating the methods of work and activities of TNCs in order to ensure that these are in keeping with the economic and social objectives of the countries in which they operate, and to promote the enjoyment of economic, social and cultural rights and the right to development.

14. In the context of globalization, where larger corporations organize themselves internationally, CETIM underlines the need to establish an international jurisdiction that is both independent and transparent and endowed with the authority and the means to counter the ravages of TNCs. Is it possible to justify that TNCs and owners of capital have total freedom to act globally, whereas organizations of peoples are limited to take action only at the national level?